STATE OF MICHIGAN

COURT OF APPEALS

JIMMY LEE GRAY, JR. and JIMMYLEE GRAY, SR.,	UNPUBLISHED April 1, 2008
Plaintiffs-Appellants,	
v	No. 274356 Wayne Circuit Court LC No. 06-608032-AW
DETROIT MUNICIPAL PARKING DEPARTMENT and ADMINISTRATIVE HEARING OFFICERS,	
Defendants-Appellees.	

Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right the dismissal of their complaint requesting declaratory and injunctive relief, as well as writs of superintending control and/or mandamus, that they filed after their vehicles were "booted, immobilized, seized and impounded due to outstanding parking violations." We reverse in part, affirm in part, and remand this matter for further proceedings.

First, plaintiffs argue that their request for declaratory relief was improperly dismissed on the grounds that plaintiff Gray, Sr. lacked standing and plaintiff Gray Jr. did not "exhaust administrative remedies." After de novo review of the trial court's summary dismissal of this request for declaratory judgment, we agree in part with plaintiffs. See *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

In Count I of their complaint, plaintiffs sought a declaratory judgment "that the City of Detroit ordinances [sections 55-2-41(c) and 55-2-51] that allow the PVB to adjudicate parking violations are in conflict with state law [MCLA 600.8395 and 257.742(7)] and the Michigan Court Rules [MCR 4.101(1)(a)] which require adjudication of parking violations obtained in Detroit in the 36th Judicial District Court, where the plaintiff Jimmylee Gray, Sr. is a Judge and thus a proper party to request declaratory relief."

The City of Detroit is a home rule city. Pursuant to MCL 117.4l(1)(a), the City had the authority to adopt ordinances that are consistent with the Michigan Vehicle Code, MCL 257.1 to 257.923, and which designate that a violation of such ordinance is a civil infraction. Further, MCL 257.606(1), provides that local authorities are not prevented

> with respect to streets or highways under the jurisdiction of the local authority and within the reasonable exercise of the police power from:
>
> (a) Regulating the standing or parking of vehicles.
>
> (b) Regulating the impoundment or immobilization of vehicles whose owner has failed to answer 6 or more parking violation notices or citations regarding illegal parking.

When interpreting statutory terms that have acquired a unique meaning in the context of law, we may turn to a legal dictionary. *People v Jones*, 467 Mich 301, 304-305; 651 NW2d 906 (2002). "Regulation" is defined by Black's Law Dictionary (7th ed) as "[t]he act or process of controlling by rule or restriction." In other words, the matters included by MCL 257.606(1)(a) and (b) can be controlled by the local government through ordinances, rules, and the like.

In this case, the City of Detroit enacted Ordinance No. 92-11, codified as § 55-2-44 of the 1984 Detroit City Code, to establish a parking scofflaw program that provides "for the immobilization and impoundment of any vehicle where the registered owner has failed to answer six (6) or more parking violation notices or citations regarding illegal parking." We note that "parking violation notices" and "citations" are quite different. See MCL 257.742, 257.743. A "parking violation notice" is "a notice, *other than a citation*, directing a person to appear at a parking violations bureau in the city . . . in which . . . the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance." MCL 257.742(9)(a). Pursuant to MCL 257.742(9)(b), a "parking violations bureau" includes a parking violations bureau established pursuant to MCL 600.8395, which provides that a city may "establish a parking violations bureau to accept civil infraction admissions in parking violation cases and to collect and retain civil fines and costs as prescribed by ordinance." MCL 600.8395(1).

Through the enactment of 1984 Detroit City Code, § 55-2-41, the City of Detroit did establish a parking violations bureau (PVB). Its stated purpose, consistent with MCL 600.8395(1), was to "accept civil infraction admissions in parking violation cases originating within the City of Detroit, and to collect and retain fines, penalties, and costs as prescribed by ordinance." § 55-2-41(a). However, the scope of the PVB is stated as follows:

> All parking violation notices or citations may be settled at the parking violations bureau by either the registered owner or by a duly authorized representative as defined in section 55-1-1. However, any registered owner who denies responsibility for a parking violation notice may request that the same be heard by the administrative hearings tribunal or be filed as a citation in and be adjudicated by the court having jurisdiction thereof. Such request by the registered owner shall not prejudice or in any way diminish the rights, privileges, and protection accorded by law. [§ 55-2-41(c).]

Plaintiffs have consistently challenged this "scope" of the PVB; specifically, the City's right to hold hearings before an "administrative hearings tribunal" if the registered owner denies responsibility for a parking violation notice. In essence, plaintiffs have questioned: By what authority does the City's alleged right to settle such disputes arise? MCL 600.8395 permits a

parking violations bureau to accept civil infraction admissions in parking violation cases—civil infraction admissions are clearly not the same as a registered owner's denial of responsibility for a parking violation notice. See § 55-2-41(c). Although this issue was specifically raised by plaintiffs in their request for declaratory and injunctive relief, as well as writs of superintending control or mandamus, neither defendants nor the trial court addressed this issue. We remand this matter to the trial court for consideration and resolution of this issue whether defendants can enact an ordinance that permits it to decide the validity of a challenge to a parking violation notice or citation that it issued.

Further, the "administrative hearings tribunal" referred to in § 55-2-41(c) was established by § 55-2-51 of the Detroit City Code as follows:

> (a) The City of Detroit shall establish an administrative hearings tribunal to conduct administrative hearings:
>
> (1) Regarding the merits of parking violation notices issued under sections 55-2-21 through 55-2-28 of this Code; and
>
> (2) Regarding the validity of the immobilization and/or the impoundment of vehicles under section 55-2-44 of this Code.

Plaintiffs have also consistently challenged defendants' authority to (1) establish this administrative hearings tribunal, and (2) allow this tribunal to "adjudicate" parking violations. Again, neither defendants nor the trial court addressed this issue. On remand, the trial court is directed to address this issue whether defendants' administrative hearings tribunal was lawfully established and properly empowered to hear and decide such matters.

MCL 257.742(7) provides that "[i]f a parking violation notice other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in [MCL 257.741(4)] and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address." Thus, it is only after a citation is issued, filed, and served on the defendant—who had initially received a parking violation *notice*—that a civil infraction action is commenced in a court of competent jurisdiction. MCL 257.741.

But, the issue in this case is: What happens if a citation is *not* filed with the court but there is no admission of responsibility for a parking violation notice? It appears that, consistent with its regulatory powers, defendants can impound or immobilize a vehicle whose owner has failed to answer six or more parking violation notices regarding illegal parking, MCL 257.606(1)(b). But then what? If the registered owner pays the fines and costs without denying responsibility, as plaintiff Gray Sr. did, it appears that the matter is settled. But if the registered owner denies responsibility, must defendants file a citation with the proper court, thus commencing a civil infraction action against the registered owner under MCL 257.741? See

MCL 117.29(1). Or, even if a citation is not issued, must the district court preside over the contested matter?[1]

Plaintiffs argue that defendants must file a civil infraction action. Defendants claim, without supporting authority, that their administrative hearings tribunal can "hear" the matter.[2] Again, plaintiffs consistently challenged defendants' lawful authority to "hear" the matter through its own administrative hearings tribunal—the executive body that issued the violation notices rather than an impartial judicial body. Does the power to "regulate" the parking and standing of vehicles and the impoundment or immobilization of vehicles under certain circumstances empower defendants to decide contested cases and may they decide these matters through their administrative hearings tribunal?

We note that a city "may establish an administrative hearings bureau to adjudicate and impose sanctions for violations of the charter or ordinances designated in the charter or ordinance as a blight violation." MCL 117.4q(1). But, defendants have neither illustrated such a blight designation nor submitted evidence that the "administrative hearings tribunal" established by § 55-2-51 is such an "administrative hearings bureau." And, it does not appear to be because defendants' administrative hearings tribunal is purportedly empowered to conduct administrative hearings "regarding the merits of parking violation notices issued under sections 55-2-21 through 55-2-28 of this Code," i.e., obvious non-blight violations. MCL 117.4q(3), also, specifically provides that an administrative hearings bureau shall not have jurisdiction over traffic civil infractions. Accordingly, defendants' authority to establish their administrative hearings tribunal to adjudicate parking violations did not arise from MCL 117.4q.

In dismissing plaintiffs' action for declaratory judgment, the trial court held that plaintiff Gray Jr.'s claim failed because an appeal from the administrative hearings tribunal decision was available through § 55-2-44(h) of the City Code. But, this holding does not address plaintiffs' claims that neither the PVB nor the administrative hearings tribunal had the legal authority to conduct a contested hearing on the matter of their responsibility for the parking violation notices. Thus, it is—and has been—plaintiffs' contention that they are not bound by the administrative hearings tribunal's "judgment" because it acted without lawful authority. Accordingly, contrary to the trial court's holding, plaintiffs are not appealing the decision of the tribunal; rather, they

[1] We note that MCL 600.8313(1) provides, in part: "A violation of an ordinance of a political subdivision that is a misdemeanor or that is not designated as a civil infraction shall be prosecuted in the district court by the attorney for the political subdivision whose ordinance was violated." See, also, e.g., MCL 41.183(6) (pertaining to township ordinance violations) and MCL 66.6(2) (pertaining to village ordinance violations).

[2] We note that in defendants' supplemental brief in support of their motion to dismiss plaintiffs' complaint, defendants referred to a "Joint Agreement for Processing Civil Infractions for Parking Violations Between the City of Detroit, Parking Bureau and 36th District Court" dated February 14, 2002, as purported authority for their administrative hearings tribunal to "hear" contested parking violations matters. However, the trial court did not reference this purported "authority" and defendants have not referenced this document in this appeal. If defendants rely on this document in relation to the remand issues, the trial court is directed to consider and decide whether this "Joint Agreement" actually grants the purported authority and whether it may lawfully do so.

are challenging its very existence and its power. Therefore, the trial court's holding that plaintiffs could have appealed this issue—which could not have been raised before the tribunal—is erroneous.

And, we question the trial court's holding that plaintiffs were entitled to an appeal under Article 6, Section 28 of the Michigan Constitution—as relates to decisions, rulings etc. of "any administrative officer or agency existing under the constitution or by law"—and MCR 7.105—as relates to appeals from administrative agencies in contested cases. We are unclear as to the court's analysis and request clarity in this regard. First, is the administrative hearings tribunal properly established? If so, is it an "administrative agency" under the Constitution or MCR 7.105? Therefore, on remand, the trial court is directed to reconsider this issue related to appeals from defendants' tribunal. And, if an appeal is not available, should the dismissal of plaintiffs' request for superintending control and/or mandamus be reversed? See MCR 3.302; *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994).

However, we do agree with the trial court's conclusion that plaintiff Gray Sr. lacked standing to pursue this declaratory judgment action. Plaintiff Gray Sr. has failed to establish that he has a case of actual controversy as required by MCR 2.605(A)(1). "An 'actual controversy' exists for the purposes of a declaratory judgment where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiff's legal rights." *Lash v Traverse City*, 479 Mich 180, 196; 735 NW2d 628 (2007). Therefore, the trial court's dismissal of plaintiff Gray Sr.'s request for declaratory relief was properly denied.

In sum, the dismissal of plaintiff Gray, Jr.'s declaratory judgment claim is reversed and the matter is remanded to the trial court for further consideration consistent with the directives of this opinion. We express no opinion as to the merits of this claim.

Next, plaintiffs argue that the trial court erred when it denied their request for injunctive relief pursuant to MCR 3.310. We agree in part, and remand the issue for further consideration. The granting of injunctive relief is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. See *Kernen v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998).

In count II of their complaint, plaintiffs requested the trial court to: (1) order "the defendants to cease and desist the illegal practice of adjudicating parking violations in contested cases before the PVB administrative hearings tribunal, an entity that exist [sic] in contravention of the statutes [MCLA 600.8395] of the state [sic] of Michigan and in violation of the Michigan Court Rules [MCR 4.101(1)(c)]," (2) order defendants to file parking violation notices and/or citations in contested cases with the 36th District Court for adjudication, and (3) order the PVB to cease and desist the practice of assessing fines, costs, and/or penalties against parties who do not appear and plead responsible at the PVB.

MCR 3.310(A)(1) provides, in part, that "an injunction may not be granted before a hearing on a motion for a preliminary injunction or on an order to show cause why a preliminary injunction should not be issued." Here, the trial court considered plaintiffs' claim a request for a preliminary injunction. In determining whether to issue a preliminary injunction, the court considers (1) the likelihood that the requesting party will prevail on the merits, (2) the danger that the requesting party will suffer irreparable harm if the injunction is not issued, (3) the risk

that the requesting party would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. See *Alliance for Mentally Ill of Michigan v Dep't of Community Health*, 231 Mich App 647, 660-661; 588 NW2d 133 (1998).

The trial court in this case dismissed this claim without addressing the underlying issues whether (1) defendants can enact an ordinance that permits it to decide the validity of a challenge to a parking violation notice or citation that it issued, and (2) whether defendants' administrative hearings tribunal was lawfully established and properly empowered to hear and decide such matters. In light of our remand of this matter on the issues discussed above, which may result in conclusions pertinent to the resolution of the issue whether an injunction should issue, we direct the trial court to reconsider this issue on remand.

Next, plaintiffs argue that the trial court erroneously dismissed their claim that defendants' "booting, immobilization, seizure, impoundment, and/or sale" of their vehicles without "the opportunity for prior judicial determination" violated their due process rights under the United States and Michigan Constitutions. In other words, was the seizure of plaintiffs' property without a judicial determination and a properly entered judgment a violation of their due process rights? Because the trial court's holding on this issue was dependent on its conclusion that plaintiff Gray Jr. had available to him "statutorily imposed administrative remedies," which we have questioned here on appeal, we remand this issue to the trial court for reconsideration and clarification. But, we affirm the trial court's conclusion that plaintiff Gray, Sr. lacked standing on the ground that he failed to establish a direct effect to his legal interest. See *Health Central v Comm'r of Ins*, 152 Mich App 336, 347; 393 NW2d 625 (1986).

Finally, plaintiffs argue that the trial court's dismissal of their complaint was premature. In light of our resolution of the issues discussed above, we need not consider this issue.

Reversed in part, affirmed in part, and remanded to the trial court for proceedings consistent with this opinion. We retain jurisdiction and direct the trial court to conduct any proceedings it deems necessary in the resolution of these matters within 42 days of the issuance of this opinion, render its opinion on the issues within 28 days of the last, if any, proceeding, and forward its findings and transcripts of any hearings to this Court within 21 days of the entry of the trial court's opinion. If no further proceedings are deemed necessary, the trial court is directed to enter an opinion on these matters within 42 days of the issuance of this opinion and forward the same to this court within 14 days of the entry of that opinion.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

Court of Appeals, State of Michigan

ORDER

Jimmy Lee Gray Jr v Detroit Municipal Parking Department

Docket No. 274356

LC No. 06-608032-AW

Kurtis T. Wilder
Presiding Judge

Mark J. Cavanagh

Karen M. Fort Hood
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 42 days of the Clerk's certification of this order and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court is directed to conduct any proceedings it deems necessary in the resolution of these matters within 42 days of the issuance of this opinion, render its opinion on the issues within 28 days of the last, if any, proceeding, and forward its findings and transcripts of any hearings to this Court within 21 days of the entry of the trial court's opinion. If no further proceedings are deemed necessary, the trial court is directed to enter an opinion on these matters within 42 days of the issuance of this opinion and forward the same to this court within 14 days of the entry of that opinion.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 01 2008
Date

Sandra Schultz Mengel
Chief Clerk